

No. 23-6534

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IN THE
SUPREME COURT OF THE UNITED STATES

LUCIOUS M. JACKSON PETITIONER

FILED
NOV 07 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

FLORIDA RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
FIFTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

- (1) Whether the state court's disregard of a Officer of the Court Reliance on FRAUD to Justify A Discriminatory Jury Strike Contradicts the Holding of the United States Supreme Court in Hazel-Atlas Glass Co. V. Hartford Empire Co., 322 U.S. 238, 245-247 (1944)
- (2) Whether, State prosecution's race neutral explanation for striking black female juror deprived Petitioner of liberty and equal protection of the laws guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Mooney v. Holohan, 294 U.S. 103, 79 L.Ed. 791 (1935)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ___ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[✓] For cases from state courts:

The opinion of the highest state court [1st DCA] to review the merits appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[✓] unpublished.

The opinion of the Fourth Judicial Circuit Court in and for Duval County Florida, appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[✓] unpublished.

JURISDICTION

[] For cases from federal courts:

The date which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[✓] For cases from state courts:

The date on which the highest state Court decided my case was June 27, 2023. A copy of that decision appears at Appendix A.

[✓] A timely petition for rehearing was thereafter denied on the following date: August 11, 2023, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) Florida Constitution Article I, Section 2, 9, & 16
- (2) Fifth, Sixth, and Fourteenth Amendments to the United States Constitution

STATEMENT OF THE CASE

By an indictment filed on June 3, 2011 Petitioner was charged with first degree murder of Gregory Chisholm and the attempted armed robbery of Gregory Chisholm, with these offenses alleged to have occurred on April 6, 2010. (I-21)

Petitioner proceeded to a jury trial and on April 12, 2012, Petitioner was found guilty of murder in the first degree and of attempted armed robbery.

On April 16, 2012, Petitioner was sentenced to life in prison for first degree murder and to 25 years in prison with a 25 year minimum mandatory term for attempted armed robbery, with the sentence for the latter offense to run concurrently with the sentence for first degree murder. (III – 446-450) Petitioner appeal the conviction, First District Court of Appeal *per curiam affirmed* the conviction without opinion on May 9th 2013.

On July 22nd, 2015, Petitioner filed a timely 3.850 postconviction motion to vacate or set aside judgment and sentence with attached exhibit in support, raising claim of newly discovered evidence. On April 11th, 2016, Petitioner filed a motion for leave to amend which was granted. Also on April 11th, 2016 Appellant filed AMENDED motion for postconviction relief 3.850 raising six additional grounds.

On May 15th, 2017 Petitioner filed another motion for leave to AMEND, and on the same date, filed a second AMENDED motion.

On October 20th, 2017 trial court issued an order partially summarily denying Petitioner's Rule 3.850(b)(1)(2) motion without ruling on April 11th, 2016 AMENDED motion for postconviction relief. The Petitioner's July 22nd, 2015 and

May 15th, 2017 postconviction motions was deemed as timely filed. On November 2nd, 2017 Petitioner filed a timely motion for rehearing.

On December 22, 2017, Order Granting in Part Petitioner's Motion for Rehearing and vacating Order Denying Petitioner's Motion for Postconviction Relief.

On December 22, 2017 Order Amended Order Denying Petition Motion for Postconviction Relief, Amended Motion for Postconviction Relief and Second Amended Motion for Postconviction Relief.

On January 5, 2023, Petitioner filed "Second Rule 3.850 motion, or Alternatively, Writ of Habeas Corpus to Prevent Manifest Injustice.

Petitioner filed timely Notice of Appeal and Judicial Acts to be reviewed motions.

Jury Selection

During jury selection, the Prosecutor moved to strike potential Juror #10, Ms. Griffin. (IV-145). Defense counsel objected and requested a race-neutral reason. *Id.*

After requesting time to consult his notes, the Lead Prosecutor stated "that he believed that she (Ms. Griffin) had testified that she was a witness to a shooting, and it was a little concerning that she apparently didn't participate after that." (IV - 146). The court ruled that the challenge was "Genuine," and permitted the challenge. (IV - 146)

Previous to this, during the course of the voir dire, the prosecutor asked the potential jurors to identify themselves if they knew someone other than themselves

who had been the victim of a violent crime. (IV – 78-79). Ms. Griffin was one of the individuals indicating that she was one of those person. (IV – 79). The prosecutor then specifically asked for those people who had raised their hands (as to this issue) if they could put aside their feelings from the event or their experience and give the petitioner in this case a fair trial. These potential jurors (presumably including Ms. Griffin) all indicated that they could. *Id.*

Later, the prosecutor asked whether anyone had ever been arrested or whether the potential jurors had a close friend that had been arrested or even a family member that had been arrested. (IV – 101).

Ms. Griffin apparently put her hand up, and the following occurred:

[By The Prosecutor]: Ms. Griffin, did you have your hand up?

Potential Juror: Yes.

Mr. Guy[the Prosecutor]: Yes, ma'am.

Potential Juror: My little brother when he was 18, was arrested before.

Mr. Guy: And was that here in Jacksonville?

Potential Juror: Yes, sir.

Mr. Guy: and about how long ago was that?

Potential Juror: Like two years ago. It was in Juvenile court.

Mr. Guy: I'm sorry? In Juvenile Court?

Potential Juror: Yes, sir.

Mr. Guy: Okay. Has that case been resolved?

Potential Juror: Yes, sir.

Mr. Guy: All right. Were you a witness in that case?

Potential Juror: No, sir.

Mr. Guy: Do you feel as though your brother was treated fairly?
Potential Juror: Yes, I do.
[IV – 103-104]

After this exchange, the prosecutor asked other potential jurors similar questions who had raised their hands. The prosecutor then asked the potential jurors as a group whether they could follow the instruction of the court that their verdict must be based upon the evidence and not prejudice or sympathy. (IV – 118-119). The prosecutor then asked the potential jurors if they could take back to the jury room with them their common sense. (IV – 119). At this point, the Prosecutor handed the *voir dire* over to defense counsel. *Id.*

Defense counsel picked up the baton, and asked the potential jurors whether anyone at this stage of the proceedings resumed that petitioner was guilty. (IV-126)

The following exchange occurred between defense counsel (Mr. Fletcher) and Potential Juror: (Ms. Griffin):

Mr. Fletcher: Ms. Griffin, do you feel the same way?
Potential Juror: No, sir. I'm a true . . . I really live by, you know, everyone is innocent until proven guilty. I don't believe anyone . . . this one is a liar or a thief or a cheater or a killer unless you actually know the facts. I'm a factual person.
Mr. Fletcher: Okay. So, Ms. Griffin . . . and then I'll move on from this topic. If you're picked on this jury and this whole week you sit up there in that jury box in nice, comfortable seats and at the end of the week you go back there and you're making a decision, are you going to make the decision in the State's opening statement, in our opening statement, after the second witness testifies or after you've heard everything?

Potential Juror: After I heard everything.

Mr. Fletcher: Heard everything. Okay. Thank you, Ms. Griffin.

(IV – 126-127)

The Prosecutor's "Race-Neutral Reason" for striking Ms. Griffin:

Mr. Guy: Judge, I believe she testified she was a witness to a shooting, and it was a little concerning that she apparently didn't participate after that. It was a follow-up question about her involvement, and I believe she stated she didn't have any further involvement. That would be our reason to strike her.

The Court: the court finds the reason given is genuine. I'll permit the challenge. Number 10 will be stricken. (IV – 146)

It appears that what Ms. Griffin actually stated was that her little brother (when he was 18) had been arrested a couple of years previously and appeared in juvenile court, and that case was resolved. Ms. Griffin thought that her brother had been treated fairly. (IV – 104). This answer, the record does not reflect that Ms. Griffin was a witness to a shooting. Moreover, later, when Ms. Griffin was asked whether she could delay her judgment on petitioner until after the evidence was concluded, Ms. Griffin stated that she was a "factual person" and that she (Ms. Griffin) would make her decision after she had "heard everything." (IV – 127)

Based on the prosecutor race-neutral explanation, the court found that the strike was "Genuine."

REASONS FOR GRANTING THE PETITION

There is no statute of limitations for bringing fraud upon the Court claim. A decision produced by fraud on the court is not in essence a decision at all and never becomes final. Robert Burke v. United States, 2005 U.S. Dist. LEXIS 25908 criminal action No. 92-260 civil action No. 96-3249; Kenner v. Comm'r of Internal Revenue, 387 F.2d 689, 691 (7th Cir. 1968); United States v. Williams, 790 F.3d 1059, 1071 (10th Cir. 2015)

A court of equity may grant relief against a judgment because of after discovered fraud, regardless of the term to its entry, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the Judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud, Hazel-Atlas Glass Co. V. Hartford-Empire Co., 322 U.S. 246."

Fraud consists of a misrepresentation, concealment, or non-disclosure of a material fact, or at least misleading conduct. Hazel-Atlas action will be granted if claim present clear unequivocal, and convincing evidence that fraud was perpetrated upon the court by an officer of the court.

A fraud upon the court action must satisfy a very demanding standard to justify upsetting the finality of the challenged judgment. The United States Court of Appeals for the Third Circuit had described the standard as follows. In order to meet the necessarily demanding standard for proof of fraud upon the court there must be (1) an intentional fraud; (2) by an officer of the court, (3) which is directed at the court itself; and (4) in fact deceives the court. A determination of fraud on the court may be justified only by the most egregious misconduct directed to the court itself, and it must be supported by clear, unequivocal and convincing evidence. The fraud on the court must constitute egregious misconduct such as bribery of a Judge or jury or fabrication of evidence by counsel.

The Supreme Court has warned that fraud on the court action must be "reserved for those cases of "Injustice which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of *res judicata*.

In view of the special role played by the American Prosecutor in the search for truth in a criminal trial, courts, litigants, and juries may properly anticipate that obligations to refrain from improper methods to secure a conviction plainly resting upon a prosecuting attorney. Johnson v. State, 44 So.3d 51, 53 (Fla. 2010)(Society's search for the truth is the polestar that guides all Judicial inquiry, and when the State knowingly presents false testimony or misleading argument to the court, the State casts an impenetrable cloud over that polestar") Tompkins v. State, 994 So.2d 1072, 1081 (Fla. 2008) "this court must accept the defendant

allegations as true to the extent that they are not conclusively refuted by the record.

State v. Reed, 102 Wash. 2d 140, 147, 684 P.2d 699 (1984) “The Prosecuting Attorney represents the people and is presumed to act with impartiality “in the interest only of justice.”

Subsequently, Trial Court improperly denied Petitioner's Order Dismissing Second Rule 3.850 Motion, Or Alternatively, Writ Of Habeas Corpus To Prevent Manifest Injustice, as untimely, in that it was filed more the two (2) years after Petitioner's conviction(s) became final. Knowles v. State, 41 So.3d 332, 333 (Fla. 1st DCA 2010). As Petitioner's motion fails to establish an exception to the two-year time limit, it is abusive and sanctionable. Johnson v. State, 44 So.3d 198, 200 (Fla. 4th DCA 2010)(“Untimely postconviction challenges which do not establish an exception to the two-year time limit, are abusive and sanctionable.”) Hall v. State, 94 So.3d 655 (Fla. 1st DCA 2012); Ferris v. State, 100 So.3d 142 (Fla. 1st DCA 2012) (See Appendix) 3.850 Appeal, 5th DCA *per curiam affirmed* (See Appendix A)

Furthermore, the record reflect State Prosecutor Intentional Deception to Deceive trial court appear in Appendix D pg. 145 line 25 and pg. 146 line 1 where State Prosecutor after a timely objection by Defense Counsel as to the strike of juror number ten (Ms. Griffin) result a race-neutral reason, trial court responded “Yes” to the request, State Prosecutor ask trial court “If I could have a moment just to review my notes with Ms. Kite.” Trial Court answer ‘You May.’ After reviewing his notes and corresponding with assistant State Prosecutor Ms. Kite, State Prosecutor Mr. Guy: gave his race-neutral reason.

State Prosecutor Mr. Guy: race-neutral reason was "Judge, I believe she (Ms. Griffin) testified she was a witness to a shooting, and it was a little concerning that she apparently didn't participate after that. It was a follow-up question about her involvement, and I believe she stated she didn't have any further involvement. That would be our reason to strike her." The trial court found the reason given is genuine. Number ten (Ms. Griffin) will be stricken. The record shows that Ms. Griffin never witnessed any shooting or crime. The State Prosecutor lied. The record shows that the issue of a "shooting" was never brought up by any party or the trial court. The record shows that Ms. Griffin, subsequent to questioning about her brother, was asked about her ability to delay her judgment until after the evidence was concluded, replied that she was a "factual person" and that she would make her decision after she had heard "everything." (Appendix D, Pg. 127 line 5-6, and 16)

Based upon the Prosecutor's affirmative misrepresentation of material facts, which lead to the trial court's "clearly erroneous conclusions."

Further, Ms. Griffin quite candidly stated that she had not witnessed her brother's offense (Appendix D pgs. 103-104) and the record is devoid of any shooting or crime which Ms. Griffin allegedly acknowledged witnessing.

Petitioner asserts that the Prosecutor committed fraud on the court and violated the Rules of Professional Conduct under (Rules: 4-3.4(b); 4-4.1; and 4-3.3(a)(1)), which lead to the violation of Petitioner Fifth, Sixth, and Fourteenth United States Constitutional rights to due process and equal protection of the law,

and a fair and impartial jury and Trial, constitutes grounds for a new trial under Rule 3.600(b)(5).

Wherefore, Petitioner respectfully request this Court to consider whether the trial court's decision that was based upon the fraud, misrepresentation of facts, and litigation in bad faith by the State Prosecutor resulted in a clearly erroneous decision which interfered with the Judicial System's ability to impartially adjudicate a matter.

Certainly, it can be determined from the face of the record, that the Prosecutor's addition of "false facts" improperly influencing the trier of fact (the Judge), resulting in the removal of Ms. Griffin as a juror. The question is whether the removal of this juror, one who the Petitioner wanted on the jury and who would have been deciding his case, had violated Petitioner's constitutional rights. The answer lies in the United States Constitution's guarantee that one may be tried by a jury of his peers and equal protection of the law. See Batson v. Kentucky, 476 U.S. 79 (1986).

Petitioner respectfully ask this Court to consider whether an alleged trial court's, "clearly erroneous conclusion" is error where the conclusion was based upon fraud, misrepresentation of facts, and litigation in bad faith.

This Court had inherent power to sanction litigant misconduct. See generally, Chambers v. NASCO, Inc. 501 U.S. 32, 43 (1991), "The key to unlocking a court's inherent power is a finding of bad faith." Barnes v. Dalton, 158 F.3d 1214 (11th Cir. 1998).

As can be seen from the well known applications of Batson, much more is involved than a concern about equal protection, due process, or the right to a trial by a fair jury. "Jury service preserves the democratic element of the law, as it guards the rights to the parties and ensures continued acceptance of the law by all of the people," see, Powers v. Ohio, 499 U.S. 400 @ 407 (1991).

CONCLUSION

Wherefore, in the interest of justice, and based on the foregoing facts, evidence and authorities, Petitioner respectfully request this Honorable Court to find that he has proven Prosecutor misconduct and fraud in its conduct during the Petitioner's jury selection process which resulted in a violation of Petitioner's State and Federal Constitutional Amendment rights under the 5th, 6th, and 14th United States Constitution, as well as Article I, Section 2, 9 and 16 of the Florida Constitution, in regards to due process and equal protection of the law, and a fair and impartial trial. Thereby warranting a new trial with an impartial jury selection process for a race-neutral jury panel. It is so prayed.

The petition for a writ of certiorari should be granted.

Date: 12-27-23

Respectfully submitted,



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